

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)
)
 v.) NO. H-15-CR-617-1
) January 12, 2017
 ERNESTO HERNANDEZ-MONTEMAYOR)

SENTENCING
BEFORE THE HONORABLE ALFRED H. BENNETT

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1 THE COURT: Good morning. Thank you. Please have
2 a seat.

3 Cause No. 15-CR-617, United States of
4 America v. Ernesto Hernandez Montemayor.

10:01 5 MR. JONES: Rob Jones, Kevin Gingras and Chris
6 Cestaro for the United States, Your Honor. Good morning.

7 THE COURT: Good morning.

8 MR. SCHNEIDER: Stanley Schneider and Phil Azar for
9 Mr. Ernesto Hernandez-Montemayor, Your Honor.

10:01 10 THE COURT: Thank you.

11 And, sir, what is your name?

12 THE DEFENDANT: Ernesto Hernandez-Montemayor.

13 THE COURT: Let the record reflect that the
14 Defendant is present, has an interpreter who will interpret
15 the proceedings for him as well as being represented by
16 legal counsel.

17 Counsel, you-all may have a seat.

18 This is a sentencing hearing in this case. I
19 want to briefly describe the Court's sentencing procedures.

10:02 20 The Supreme Court has held in *United States v.*
21 *Booker* that the United States Sentencing Guidelines are
22 advisory, not mandatory, for judges. *Booker* requires a
23 sentencing court to consider guideline ranges, but it
24 permits the Court to tailor the sentence in light of other
10:02 25 statutory concerns as well.

1 The Court, in the exercise of its sentencing
2 discretion, therefore, will rely on the factors set out in
3 Section 3553(a) to fashion an appropriate sentence in this
4 case to achieve the congressionally mandated purposes of
10:02 5 sentencing as set forth in the Sentencing Reform Act of
6 1984. The Court will endeavor to faithfully apply these
7 directives within the guidelines in their entirety to
8 determine the total offense level and criminal history
9 category under the guidelines. Thereafter, the Court will
10:03 10 exercise its discretion to determine the appropriate
11 sentence. In so doing, the Court will give considerable
12 weight to the sentencing range calculated under the
13 Guidelines.

14 Any comments by the Court in the course of
10:03 15 this sentencing are not to be construed as indication that
16 the Court, in fact, believes that the Guidelines are
17 mandatory or that they constrain the Court's ultimate
18 sentencing discretion.

19 The standard of proof for factual findings in
10:03 20 connection with sentencing is preponderance of the evidence.
21 In determining whether that standard is met, a presentence
22 report is generally considered sufficiently reliable to be
23 considered by the trial court as evidence in making the
24 factual determinations required by the sentencing
10:03 25 guidelines.

1 In preparation for today, I've reviewed the
2 presentence investigation report, the government's motion
3 for a 5K1 departure, Defendant's objection to the
4 presentence report, the unopposed motion for preliminary
5 order of forfeiture.

6 Taking the bench, I was made aware of an order
7 amending the preliminary order of forfeiture to include
8 substitute assets.

12 MR. JONES: Not for this hearing, Your Honor.

13 THE COURT: Okay. Counsel, any additional
14 documents that were provided?

10:04 15 MR. SCHNEIDER: No, Your Honor.

16 THE COURT: Very well.

17 In connection with objections to the
18 presentence report, the Court notes that the government has
19 not filed any objections to the presentence report.

10:05 20 In connection with the defense, the defense
21 did file an objection to the presentence report,
22 specifically to Paragraph 42, where there was an additional
23 enhancement for the Defendant's alleged position of trust.

24 Mr. Schneider, I'll hear you on your
10:05 25 objection.

1 MR. SCHNEIDER: Your Honor, as based on the
2 presentence report, as Mr. Hernandez describes to the
3 agents, he was a middleman between companies in the United
4 States and government officials in Mexico.

10:05 5 He was just -- They -- The offense could not
6 be committed without the approval of the people in Mexico
7 who were -- approved every invoice, authorized the payments
8 and were within the government.

9 So, it's not just a question of him being a
10 pilot bringing the plane to the United States to be
11 processed by -- I mean, be repaired by a company and the
12 company then preparing an invoice and sending it to Mexico.
13 It's the people in Mexico in the government -- one of the
14 people has not been charged, Mr. Samano -- and other people
10:06 15 in the government who had to approve the invoices and
16 authorize the payments.

17 And, so, without them -- That's where the
18 trust is, is in the government and the agency that
19 authorized the payment and not just being the middleman who
10:06 20 flew the planes, presented the planes and received the
21 payments from the companies.

22 So, we don't think that's a position of trust.
23 That means any middleman -- any person has a position of
24 trust just because you are a pilot or a doctor or a lawyer
10:07 25 or whatever because of your position.

1 So, we believe that the -- because he is the
2 middleman, it's not a position of trust within the meaning
3 of the guidelines; and, so, the two levels should not be
4 considered.

10:07 5 THE COURT: Well, first of all, let me get to an
6 administrative matter.

7 Is it correct to refer to your client as
8 "Mr. Hernandez" or "Mr. Montemayor"?

9 MR. SCHNEIDER: Hernandez, Your Honor.

10:07 10 THE COURT: Mr. Hernandez.

13 MR. SCHNEIDER: Yes, Your Honor.

18 MR. SCHNEIDER: Yes, Your Honor.

19 THE COURT: And in regards to his position as a
10:07 20 chief pilot, did he have any discretion in regards to his
21 duties?

22 And the reason that I ask that question, in
23 your objection, you lay out the two-part test: first,
24 whether the Defendant occupied a position of trust.

10:08 25 And I believe that Mr. Hernandez in

1 Paragraph 28 -- or in referencing Paragraph 28 of the
2 presentence report, stated that he, in fact, was the
3 official of the foreign state government. Correct?

4 THE DEFENDANT: [In English] Yes.

10:08 5 THE COURT: Part 2, whether the Defendant abused
6 his position in a manner that significantly facilitated the
7 commission or concealment of the offense.

8 In presenting your objection, you described
9 him as a middleman, which would go to the facilitation of
10 the commission of the crime.

11 MR. SCHNEIDER: The crime -- If the planes weren't
12 being taken to the United States to be serviced -- In answer
13 to your question about discretion, he could choose where to
14 take a plane to be serviced.

10:09 15 And as pointed out in Paragraph 29, there were
16 multiple companies and multiple planes that were servicing
17 the planes for -- servicing the planes and the helicopters.

18 And, so, discretion -- taking a plane to a
19 particular company, that would be discretionary. Having the
10:09 20 plane serviced, that's something that had to be done. He
21 had no choice but to get the plane serviced and to take care
22 of the planes and make sure they were in flying order.

23 So, he was doing his job in getting them
24 serviced, but the crime of creating the invoices for excess
10:09 25 money and getting them sent to the government for payment,

1 he had no role in getting the government to approve that
2 amount or paying that amount and transferring the money to
3 the United States -- the companies, who then gave him the
4 money and then he disbursed the money.

10:10 5 So, the discretion is limited to the choice
6 of which company would go -- would get the contract for
7 payment -- or for servicing the plane.

8 So, yes, there's some discretion, but not the
9 type of discretion that one might see in a.... I'm trying
10:10 10 to think of an example. But it's not the same as what I
11 think is envisioned because the actual control of the money,
12 the control or approval of the contract, the processing of
13 the --

14 THE COURT: You say control over the money, but the
10:10 15 money was deposited into his accounts --

16 MR. SCHNEIDER: Yeah.

17 THE COURT: -- which he disbursed.

18 MR. SCHNEIDER: And he disbursed.

19 THE COURT: All right.

10:11 20 MR. SCHNEIDER: So, I think -- Because what
21 happened in Mexico, without that governmental approval and
22 government oversight for people that were above him in the
23 governmental agency, he had limited control.

24 THE COURT: Very well.

10:11 25 Anything from the government on Defendant's

1 objection to the presentence report?

2 MR. CESTARO: No, Your Honor. We just rest on the
3 papers.

4 THE COURT: Very well.

10:11 5 The objection is overruled.

6 Any other objections from defense?

7 MR. SCHNEIDER: No, Your Honor.

8 THE COURT: Mr. Hernandez.

9 THE DEFENDANT: [In English] I'm sorry.

10:11 10 THE COURT: Do you need your -- the headphones?

11 MR. AZAR: No, he doesn't.

12 THE COURT: Mr. Hernandez, your counsel has lodged
13 an objection to the presentence report, which I've now dealt
14 with. I'm inquiring as to you personally.

10:12 15 Have you seen the presentence report?

16 THE DEFENDANT: [In English] Yes.

17 THE COURT: Have you reviewed the presentence
18 report with your legal counsel?

19 THE DEFENDANT: [In English] Yes.

20:12 20 THE COURT: Has he answered all of your questions
21 regarding the presentence report?

22 THE DEFENDANT: [In English] Yes.

23 THE COURT: Do you personally have any additional
24 objections that you need to be heard on as to the
10:12 25 presentence report?

1 THE DEFENDANT: [In English] No.

2 THE COURT: Very well. Thank you. You may have a
3 seat.

4 These are the Court's final guidelines
10:13 5 findings and legal conclusions.

6 The total offense level is a 24. The criminal
7 history category is a I. Based upon those findings, the
8 guidelines provide for a term of imprisonment of 51 to
9 63 months, a term of supervised release of one to three
10 years, a fine of \$10,000 to \$4,585,220 and a
11 one-hundred-dollar special assessment.

12 What is the government's position on
13 sentencing?

14 MR. JONES: Your Honor, it's really kind of two
10:13 15 parts. As you've seen, we did file a motion under 5K of the
16 guidelines as well.

17 But, clearly, the offense itself is a serious
18 offense. It is an international offense and, as the Court
19 has seen from the facts, it did have impact in this country
10:14 20 as well as abroad.

21 We do believe the guidelines are correctly
22 scored at the 51-to-63-month range, of course. And we
23 think -- Given the nature of the offense and given the facts
24 that we have detailed in the motion that we filed, we do
10:14 25 feel that an appropriate sentence in this case would be a

1 34-month sentence of confinement.

2 THE COURT: I was mulling over that number. And to
3 get to that, I understand that there is a standard practice
4 of basically a third off, but you understand that that's a
10:14 5 four-level departure.

6 MR. JONES: Yes, Your Honor. I mean, I'll say
7 that, yes, we do, because the guidelines are advisory now.
8 We generally -- Our practice is we look at the range that we
9 think is appropriate and we think about what would we
10:14 10 recommend the Court sentence a defendant at without a 5K.
11 In this case, that would probably be the 51-month low end,
12 given the fact that there isn't any criminal history and
13 things like that. And then we'd make a recommendation
14 within our office for approval about a sentence that we
10:15 15 think would be appropriate.

16 That is the process we used here within our
17 office and within the Department of Justice, since we're
18 both on this case. The agreed recommendation was to be a
19 third off. It's not an automatic one-third off or anything
10:15 20 like that. We do think that, given what the Defendant did,
21 as detailed in our motion, that the one-third is appropriate
22 in this case.

23 We do understand how -- when you look at the
24 guideline chart, how the levels looked and where they
10:15 25 correspond to, but I can tell the Court we didn't actually

1 consider how many levels we're going to recommend off, being
2 that the guidelines are advisory. And, so, we just
3 recommended the 34-month sentence, which we think for all
4 the facts and circumstances of this case would be an
10:15 5 appropriate sentence.

6 THE COURT: Very well.

7 What is the defense's position on sentencing?

8 MR. SCHNEIDER: Well, Your Honor, there's several
9 factors that I think are important. And it's unusual that
10:16 10 you have a presentence report that details who the person is
11 being sentenced, who Mr. Hernandez is, and details the
12 extent of his cooperation.

13 This is an unusual situation.

14 On November 8, 2015, when Mr. Hernandez was
15 taken into custody on a complaint out of Brownsville, he
16 immediately began the journey of cooperation. He
17 immediately answered questions.

18 Once he had counsel, we spent several days
19 answering questions and going through the process of
10:16 20 explaining what was happening, how it was happening, who was
21 involved.

22 The presentence report suggests maybe a
23 limited debriefing, but there have been five or six
24 different meetings with the government, answering their
10:17 25 questions about who, what, where and how.

10 Everything has been streamlined to show his
11 cooperation, to show his remorse and to show his desire to
12 make amends for what he did.

16 So, we're going to be asking the Court --
17 we're asking the Court to give him time served, and the
18 reason for that is -- there is a reason for my madness.

22 MR. SCHNEIDER: Approximately 15 months.

23 And the reason I'm saying 15 months or some
24 variation -- something close to that, is that on a 34-month
10:19 25 sentence -- Normally, the Bureau of Prisons will release a

1 prisoner to a halfway house to allow them to get back into
2 society with supervision, get a job, work, and acclimate
3 them to being free.

4 Because Homeland Security withdrew

10:19 5 Mr. Hernandez's visa upon his arrest, he has no legal status
6 in the United States. So, immediately upon -- when he gets
7 ready to be released from prison, he'll be sent to Homeland
8 Security for deportation proceedings. And, so, the benefit
9 of a halfway house he will not get for being acclimated back
10 into society.

11 And then, once he gets into immigration
12 proceedings, it will be sometimes 30, 60, 90 days of
13 processing just for the government to get him deported.

14 And, so, we start getting into this process of
10:20 15 what is the purpose of punishment, what is the purpose of
16 what we're trying to do when you have someone who has
17 attempted to make amends by his cooperation, by agreeing to
18 the forfeiture. And the forfeiture of what we have signed
19 today is an agreed order for amending the preliminary order
20 of forfeiture to substitute free assets -- a piece of
21 property in The Woodlands, an airplane and a Mercedes.

22 And then the other aspect of Mr. Hernandez is
23 that -- and he will speak to this, also -- is that he has
24 extensive family who are here who have come from Mexico to
10:20 25 be supportive of him -- his brothers and sisters and

1 sisters-in-law. His wife and three kids couldn't travel
2 here. So, he has extensive support and he's not alone in
3 Mexico and he's going to go back to a loving situation.

19 And, so, his ability to work is going to be
10:22 20 limited; and, so, he's going to have to start all over
21 again. Because of his status as a pilot, his lifetime
22 profession, things are limited.

23 And, so, we're going to ask the Court to --
24 given the extent of the cooperation -- the instant
10:22 25 cooperation, the waiver of indictment, the proceeding --

1 instantly agreeing to proceed with the government and
2 working with the government constantly on trying to make
3 amends, we believe that a sentence substantially less than
4 34 months is something that is justified, given the
10:23 5 bureaucracy of Homeland Security, the extent of his
6 cooperation, the extent of his work that he's done and the
7 remorse and the suffering he's had based upon the loss of
8 his mother and being unable to have his children and wife
9 even visit him has been limited because of distance and
10:23 10 because of being away from his family.

11 So, we believe 15 months may be low, but
12 that's -- he's already served that and I believe it's -- He
13 gets 45 days' credit for every year that he's in custody for
14 good time or good behavior. He's got a job as a trustee
10:24 15 in -- at Joe Corley right now.

16 So, that would add another month and a half to
17 his sentence that he's earned. That would be 16 months.
18 And if he gets a 34-month sentence, that's two more months
19 that he would get credit for. That would be 18 months.

10:24 20 So, I think that a sentence around 15 to
21 18 months would be reasonable, given the nature of
22 deportation, given the nature of what he's done and what
23 work he has done since he's been in custody and since he was
24 arrested. So, that's what we're asking for, Your Honor.

10:24 25 THE COURT: Very well.

1 Mr. Hernandez, this is your opportunity to
2 address the Court and for you to tell me what you would like
3 for me to consider prior to pronouncing sentencing.

10:26 15 And, obviously, you have something that you
16 want and need to say to me, but after the conclusion of what
17 you've thought about, I'd like for you and for your attorney
18 to circle back and just address those concerns for me.

19 So, I want to first hear from Mr. Hernandez
10:26 20 and then, Mr. Schneider, I'll give you an opportunity to....

21 MR. SCHNEIDER: Your Honor, Mr. Hernandez speaks
22 English. He and I communicate very well in English, but
23 sometimes -- If the Court could repeat its inquiry.

24 THE COURT: Yes.

10:27 25 MR. SCHNEIDER: I want to make sure he understands

1 the question.

2 THE COURT: Very well.

3 Mr. Hernandez, in reviewing this case --

4 MR. AZAR: One second, Your Honor. Sorry, Your
10:27 Honor.

6 THE COURT: In reviewing this case, there were
7 three areas of concern that -- three areas that caught my
8 attention.

9 One was the subject of your counsel's
10 objection to the presentence report, which was that you were
11 in a position of trust with a foreign government and that
12 trust was abused.

13 Secondly, there was significant personal
14 enrichment. These sums that we're talking about were not
10:28 15 insignificant. Understand?

16 And third was the vast number of people -- in
17 this conspiracy, the number of people involved in this
18 cross-border crime.

19 You have probably some prepared remarks or
10:28 20 something that you've thought about that you want to tell
21 me, and I want to hear you out fully on your remarks.

22 At the conclusion of those remarks, if you
23 could, circle back and address these three areas as to
24 importance to me. And I'll give your attorney the same
10:28 25 opportunity because some of it may be more legal than

1 something that you're going to address. But those were the
2 three areas that caught the Court's attention.

7 THE DEFENDANT: [In English] I can speak in
8 English.

9 THE COURT: And, counsel, will you pull his mic a
0 little bit closer to him that's in front of your screen
1 right there.

12 MR. SCHNEIDER: Yes.

13 THE COURT: Thank you.

14 THE DEFENDANT: Your Honorable Judge Bennett, I
15 apologize for reading this, but I'm not a good speaker and
16 writer. I am nervous and scared.

17 I should not be here because I born and raised
18 (crying) by the best parents that anybody could have. They
19 taught me right from wrong. I wish to have them here, but,
20 unfortunately, they passed away.

21 I apologize -- Sorry. I apologize also to my
22 wife and kids -- they are not here because they don't have
23 legal papers -- and my daughters and my sisters for the
24 embarrassment I have caused to them.

10:31 25 | We all make mistakes, and my problem was to

1 stay around the wrong people who put too much pressure on
2 me. I know temptations are everywhere.

3 So, all this time that I've been in this
4 detention center made me think all the good things I am
10:31 5 missing, to see my kids and my wife back again, and I
6 praying every night nothing happen to them.

7 But one thing happened. It was the worst.

8 Last June 14, 2016, my mom passed away and I didn't have the
9 chance to thank her for giving me life. I didn't have the
10:32 10 chance to tell her about how much I love her and all the
11 things they did for me.

12 Many nights I lie awake and think how I was
13 wrong, but I also think of doing right. When I get out, I
14 teach my kids to do right. I apologize to this country, and
10:32 15 I respect your laws.

16 God bless you all.

17 MR. SCHNEIDER: If I may ask.

18 THE COURT: Actually, I'm going to give you the
19 last word to talk about those questions that I posed.

20:33 20 Before coming back to you, Mr. Schneider,
21 anything else from the government?

22 MR. JONES: Your Honor, I'm sure the Court knows
23 this. I mean, we don't dispute the Defendant's
24 remorsefulness or anything like that. He did accept his
10:33 25 responsibility. We think that's captured under the

1 acceptance guideline.

2 We think our recommendation overall is fair
3 and takes into account what he did, and we base that on --
4 You know, we've seen a lot of people who help out in a lot
10:33 5 of different cases and some people do more than others. We
6 think our recommendation is fair based on what this
7 defendant did in this case.

8 THE COURT: Very well.

9 Mr. Schneider.

10:33 10 MR. SCHNEIDER: In addressing your question and
11 having Mr. Hernandez address this question, if I may pose a
12 couple of questions to him, that may facilitate you getting
13 your answers.

14 THE COURT: Very well, sir.

10:34 15 MR. SCHNEIDER: Mr. Hernandez, the people in Mexico
16 in the government, who were they?

17 THE DEFENDANT: [In English] Okay. There was
18 the -- I don't know how you explain it -- the guy who take
19 care of some of the money in the government, the -- what we
10:34 20 call the treasurer, and this is the treasurer of the private
21 secretary of the governor.

22 The other one is the treasurer -- the general
23 treasurer of the state. And the other one was the
24 administration of the government.

10:34 25 They put the pressure on me because I

1 didn't -- they start fabricating invoices. I have to sign
2 it so they can get that thing.

3 MR. SCHNEIDER: The \$1.6 million that you got, did
4 you get all of it or did other people get it as well?

10:35 5 THE DEFENDANT: No. They get it as well. They
6 don't do nothing if you don't -- if you don't -- I mean,
7 they put that pressure to you so they can get the money.
8 So, they -- That's the way they work. I cannot explain more
9 different.

10:35 10 MR. SCHNEIDER: And the companies here in the
11 United States, who picked those companies out?

12 THE DEFENDANT: We make selections of three
13 companies. And what they want is the ones that like to do
14 that kind of things.

10:35 15 And when they start, they told me -- say,
16 "Ernesto, you have an account in the United States." I have
17 a little account here. For them it isn't easy not sending
18 the money back to Mexico. I don't know why.

19 So, they were telling me, "You have the money.
10:36 20 We can send it to your account." I didn't know the law.
21 So, they put it in my account.

22 MR. SCHNEIDER: And, so, you have the people in
23 Mexico telling you what to do, and you had to do it --

24 THE DEFENDANT: Yes.

10:36 25 MR. SCHNEIDER: -- to keep your job?

1 THE DEFENDANT: Yes.

2 MR. SCHNEIDER: You have the people in the United
3 States who are willing to do it --

4 THE DEFENDANT: Yes.

10:36 5 MR. SCHNEIDER: -- to get the business from Mexico?

6 THE DEFENDANT: Yes.

7 MR. SCHNEIDER: And the 1.6 million that you got,
8 how much more of that money was given to people in Mexico?

11 MR. SCHNEIDER: Well, you got some.

12 THE DEFENDANT: Yes.

13 MR. SCHNEIDER: And you got bonuses and things like
14 that.

10:36 15 THE DEFENDANT: Yes.

16 MR. SCHNEIDER: So, there's a lot of different
17 people involved?

10:37 20 THE COURT: All right. Given the unusual nature of
21 that, anything else from the government?

22 MR. JONES: The only thing we would say is the
23 Defendant certainly kept a large portion of the money, a
24 the Court knows.

10:37 25 That's all, Your Honor.

1 THE COURT: Very well.

2 Mr. Schneider, your last word.

3 MR. SCHNEIDER: Yes, Your Honor.

4 I think that answered the Court's question
10:37 5 that -- When I listened to the initial debriefing, the role
6 of the government officials working for the government or
7 the state that he came from, Mr. Samano, that's where it
8 starts from.

9 And I think you'll see on Page 5 of the
10:37 10 guideline, Paragraph 19 -- no -- excuse me -- the chart with
11 Mr. Samano, I think it says 600-some-odd thousand dollars
12 went to him, but the other money went to other people. And
13 but for the -- Then you have the companies here, the people
14 that were paying here.

10:38 15 This is a serious crime, but Mr. Hernandez is
16 forfeiting a piece of property in The Woodlands, he is
17 forfeiting an airplane and is forfeiting a car, so that he's
18 divesting himself of most of -- properties almost equal to
19 the 1.6 million that he's received, with the property, the
20 car and the airplane.

21 THE COURT: Were those proceeds of the crime
22 itself?

23 MR. SCHNEIDER: No, Your Honor, but they're assets
24 that he has. That's why they're substitute assets. Most of
10:38 25 the proceeds are gone. Because this goes back to -- 2007 is

1 when the initial payments are being made; and, so, you're
2 dealing with money that was paid almost a decade ago.

3 And, so, I think that, in this instance,
4 while the government may think that their recommendation of
10:39 5 34 months is reasonable -- it is; we appreciate the 5K --
6 you have discretion under *Booker* to go -- once the 5K is
7 filed, it shows that the Court has unfettered discretion to
8 do what is appropriate.

9 And while this is a serious offense, while
10 this is international payoffs to companies for business that
11 the government has frowned upon, this is a case that
12 Mr. Hernandez, I think, deserves a little mercy.

13 And losing -- given the situation of not being
14 able to see his children for 15 months, not being present
10:40 15 for the loss of his mother, that's punishment in and of
16 itself that exceeds being locked up.

17 I ask the Court to consider that in assessing
18 punishment that's appropriate, given those circumstances.
19 We ask for time served, but under two years would be --
10:40 20 would facilitate his getting back to his family.

21 THE COURT: Very well.

22 Defense counsel makes compelling arguments
23 which I want to briefly address.

24 On behalf of Mr. Hernandez, defense counsel
10:41 25 points out that, in regards to Mr. Hernandez's profession,

1 it will be severely impacted and that he will not be able
2 to -- I believe the phrase used was "to fly north" as a
3 result of having to seek Attorney General approval before
4 landing here in the United States. However, this inability
10:41 5 to fly north without this approval is the direct result of
6 the Defendant's criminal conduct.

7 In addition, the Defendant suffered the loss
8 of his mother, for which he has the Court's condolences and
9 for which he was not able to visit her, be at her bedside.
10:42 10 But, again, this was the result of the Defendant's criminal
11 conduct.

12 The Defendant in his statement, as well as
13 defense counsel's presentation, mentions that the Defendant
14 has become separated from his family, including his three
10:42 15 minor children and his extended family; but, again, this is
16 a result of the Defendant's criminal conduct.

17 The government, for its part, has acknowledged
18 the substantial and meaningful assistance provided by the
19 Defendant in unpacking and unravelling this conspiracy and,
10:43 20 as the Court reads the record, it directly led to the
21 indictment of others involved in the conspiracy and the
22 information provided by the Defendant streamlined the
23 prosecution of this case.

24 The government has recommended a 34-month
10:43 25 sentence as a result of the meaningful and substantial aid

1 provided by the Defendant in the prosecution of this case.

2 As a result of the foregoing, pursuant to the
3 Sentencing Reform Act of 1984, it is the judgment of the
4 Court that the Defendant, Ernesto Hernandez Montemayor, is
10:43 5 hereby committed to the custody of the Bureau of Prisons to
6 be imprisoned for a term of 24 months.

7 Upon release from imprisonment, the Defendant
8 shall be placed on supervised release for a term of one
9 year.

10:44 10 Within 72 hours of release from the custody of
11 the Bureau of Prisons, the Defendant shall report in person
12 to the probation office in district to which the Defendant
13 is released.

14 While on supervised release, the Defendant
10:44 15 shall not commit a federal, state or local crime, shall
16 comply with the standard conditions that have been adopted
17 by this court under General Order No. H-1996-10, abide by
18 any mandatory conditions required by law, and shall comply
19 with the following additional conditions:

10:44 20 The Defendant shall not possess a firearm,
21 ammunition, destructive device or any other dangerous
22 weapon.

23 If deported, the Defendant is not to reenter
24 the United States illegally. If the Defendant is deported
10:44 25 during the period of probation or the supervised release

1 term, supervision by the probation officer becomes inactive.

2 If the Defendant returns, the Defendant shall
3 report to the nearest US probation office immediately.

4 Supervision by the probation office reactivates
5 automatically upon the Defendant's reporting.

6 The Defendant shall cooperate in the
7 collection of a DNA sample from the Defendant, if the
8 collection of such a sample is authorized, pursuant to
9 Section 3 of the DNA Analysis Backlog Elimination Act of

10 2000.

11 It is further ordered that the Defendant shall
12 pay to the United States a special assessment of \$100.

13 The Court finds, based upon the information
14 provided in the presentence report, that the Defendant does
15 not have the ability to pay a fine and the Court will waive
16 the fine in this case.

17 Having assessed the Defendant's ability to
18 pay, payment of total criminal monetary penalty shall be due
19 as follows:

20 The Defendant shall make a lump-sum payment of
21 \$100 due immediately. Payment is to be made through the
22 United States District Clerk, Southern District of Texas.
23 Payment of criminal monetary penalty shall be due during the
24 period of imprisonment.

25 Anything else from the government?

1 MR. JONES: Your Honor, just a couple of issues.

2 Forfeiture in this case. We do have the
3 preliminary order of forfeiture, which I believe should be
4 made final at this time.

10:46 5 MR. SCHNEIDER: I have the order.

6 MR. JONES: There's an additional document. After
7 that's filed, it sounds kind of strange to say this, but we
8 are now -- Once that's signed, we will ask that it be
9 amended -- immediately amended -- I know that sounds
10 strange, but that's just the terminology used in the
11 rules -- amend that order to address the substitute assets.
12 And we have prepared an order and all parties have signed
13 that.

14 THE COURT: Hand that to the --

10:46 15 MR. JONES: That needed to be done after the
16 preliminary order became final, which is one reason why we
17 didn't e-file it ahead of time and, also, because we needed
18 to put all of our signatures on it. So, I did send an
19 advance copy to your case manager yesterday, Your Honor.

20 THE COURT: So, I have the order amending the
21 preliminary order of forfeiture to include substitute. I
22 may find the original order that I need to sign first.

23 MR. JONES: Yes.

24 THE COURT: I see the unopposed motion for a
10:47 25 preliminary order of forfeiture. I do not see the actual

1 order itself, but it is so ordered from the bench. And then
2 I will sign the order confirming a written order, if
3 necessary.

4 In regards to the order --

10:47 5 MR. JONES: I do have an additional copy, Your
6 Honor.

7 THE COURT: Oh. Very well.

8 That order has been signed. The Court has
9 also now been presented with the order -- amended
10 preliminary order of forfeiture to include substitute
11 assets. It has been signed by the Defendant as well as all
12 counsel. The Court has signed that as well.

13 Anything else from the government?

14 MR. JONES: No, Your Honor.

10:48 15 MR. CESTARO: One other, if I may.

16 THE COURT: Yes.

17 MR. CESTARO: I would just like to note for the
18 record that the Defendant has waived his right to appeal the
19 sentence pursuant to the agreement.

10:48 20 THE COURT: Pursuant to the plea agreement?

21 MR. CESTARO: Yes.

22 MR. SCHNEIDER: It's in the plea agreement, Your
23 Honor. He has waived his right to appeal. But I think the
24 Court -- There still is an admonishment that --

10:48 25 THE COURT: Yes.

1 MR. SCHNEIDER: -- it is required that you advise
2 him of his right to appeal even though there is a waiver --

3 THE COURT: Mr. Hernandez, under some circumstances
4 a defendant also has the right to appeal the sentence.

10:48 5 However, a defendant may waive that right as part of a plea
6 agreement.

7 You have entered into a plea agreement which
8 waives some or all of your rights to appeal the sentence
9 itself. Such waivers are generally enforceable. But if you
10 believe the waiver itself is not valid, you can present that
11 theory to the appellate court.

12 If you appeal, that appeal must be filed
13 within 14 days of the entry of judgment. If you cannot
14 afford to pay the cost of appeal, you can ask to proceed
10:49 15 without payment of costs. You have the right to have an
16 attorney appointed to represent you on appeal if you cannot
17 afford an attorney.

18 Anything else from the government?

19 MR. JONES: No, Your Honor.

10:49 20 THE COURT: Anything else from the defense?

21 MR. SCHNEIDER: No, Your Honor. Thank you very
22 much.

23 THE COURT: Very well.

24 THE DEFENDANT: Thank you, Your Honor.

10:49 25 THE COURT: The Defendant is hereby remanded into

1 the custody of the deputy United States marshals.

2 We are adjourned. You're excused.

3 MR. JONES: Thank you, Your Honor.

4 MR. CESTARO: Thank you, Your Honor.

5 COURT REPORTER'S CERTIFICATE

6 I, BRUCE SLAVIN, certify that the foregoing is a
7 correct transcript from the record of proceedings in the
8 above-entitled matter, to the best of my ability.

9

10 *s/Bruce Slavin*
11 BRUCE SLAVIN, RPR, CM

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